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 Plaintiff in Pro Per

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 SUSAN Y. BOONG
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Tatyana E. Drevaleva

Plaintiff,

vs.

- 1) The U.S. Department of Veterans Affairs
- 2) Mr. Peter O'Rourke, Acting United States Secretary of Veterans Affairs
 810 Vermont Avenue, NW
 Washington, DC 20420

Facility: New Mexico VA Healthcare System
 1501 San Pedro Drive, S.E.
 Albuquerque, NM 87108

Defendant.

CV 18 3748

Complaint for Employment
 Discrimination.
 Demand for Jury Trial.

SVX

Plaintiff Tatyana Drevaleva herein submits her Complaint for Employment Discrimination against the U.S. Department of Veterans Affairs.

- 1) **Jurisdiction:** This court has jurisdiction over this complaint because: a) the Defendant is the U.S. Department of Veterans Affairs, b) there are Federal questions involved such as the 1st and the 5th Amendments to the U.S. Constitution, c) I am suing the United States

under 28 I.S.C. §1346(b)(1), "Subject to the provisions of chapter 171 of this title, the district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred"

2) **Venue** is appropriate in this Court. Read 28 U.S.C. §1402(b), "Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred." Currently, Plaintiff Tatyana Drevalova is residing in Monterey County

3) Plaintiff Tatyana Drevalova is a former employee of the Raymond G. Murphy Veterans Affairs Medical Center in Albuquerque, NM.

Introduction.

I was retaliated and unlawfully terminated from the Raymond G. Murphy VAMC (the Hospital) for my intention to have a child. I was not reinstated back to work. To substitute me, the Hospital hired two male employees who were much younger than I am. The Department of Veterans Affairs (the Agency) failed to issue its decision in my retaliation and unlawful termination case. The Agency also refused to give me a Right to Sue Letter.

Statement of Facts.

I was hired as a Medical Instrument Technician (Electrocardiograph), Full Time at the Raymond G. Murphy VAMC (the Hospital) starting on April 03, 2017. I was undergoing the Orientation, and I was expecting to work as a Monitor Technician observing cardiac monitors at 5D. The Manager of 5D was Ms. Carla Dunkelberger, RN, the Assistant Manager was Mr. Phil Johnson, RN.

1 I am a citizen of the United States of America and the Russian Federation. I was born in
2 Russia and got naturalized in the United States in December 2013.

3 At that time of hire, I was 50 yo. I was fully qualified for this position. I possess a
4 certificate of an EKG Technician issued by City College of San Francisco, a BLS HCP card, and
5 a number of years of experience working as an Electrocardiography and a Monitor Technician at
6 leading hospitals of Northern California such as UC Davis, Kaiser Permanente Medical centers
7 in Oakland and Walnut Creek, LifeWatch, Inc., the San Francisco VAMC, and Alameda Health
8 System.

9 In the beginning of May 2017, I informed Ms. Dunkelberger that I was 50 yo. I said that I
10 had been married twice but I didn't have children because both husbands refused to give me
11 children. I said that I also had sexual relationships with men in a hope to get pregnant and give
12 birth to the baby but unsuccessfully. I also said that, while being a patient of Kaiser Permanente,
13 I underwent approximately eight in-utero inseminations (IUIs) using donor's sperm but I didn't
14 get pregnant. I also said that I had spent 2.5 years in Russia from January 2014 to July 2016
15 trying to get a full medical examination and to find a solution to get pregnant. I said that in
16 Russia I had undergone three attempts of In-Vitro Fertilization (IVF), and I have an embryo
17 which is frozen in Russia. I said that at that time I was taking hormonal pills named Jeanine

18 <https://www.drugs.com/international/jeanine.html>

19 that I brought from Russia and that was not available in the United States. The goal of
20 these pills is to prevent menstrual periods and stop ovulation. These pills were prescribed by my
21 Russian OB/GYN. I was taking these pills non-stop starting July 2016. In the beginning of May
22 2017, I had approximately 10 (ten) pills, and I couldn't refill these pills in the United States. I
23 couldn't afford to be without this medication because otherwise I would be heavily bleeding.

24 I said to Ms. Dunkelberger that in Russia I had a right to perform a free of charge IVF
25 attempt as a citizen of Russia. I said that I had been in the registry of patients of the Ministry of
26 Health of the Novosibirsk Region of Russia. I was on a waiting list for the free IVF attempt for
27 approximately 9 (nine) months, and my turn just came in. I informed Ms. Dunkelberger that I
28 urgently needed to fly to Russia to refill a prescription for Jeanine and to perform an IVF

1 attempt. I also pointed out at the price of one IVF attempt in the United States (approximately 15
2 – fifteen thousand U.S. dollars), and I said that there was no chance for me to afford paying this
3 amount of money with my salary 40 – forty thousand U.S. dollars per year minus taxes.

4 In the United States, I don't have a family. I am twice divorced, and I have no relatives.
5 When I moved to Albuquerque, NM, I rented a room. I provided the Hospital with my home
6 postal address in Albuquerque, NM. I notified Ms. Dunkelberger that I don't have any relatives
7 and family members in the United States, I live alone, I don't have a car, I don't have any
8 definite place of living, and I rent a room in Albuquerque.

9 I said to Ms. Dunkelberger that my plan was to go to Russia for approximately 1.5
10 months, to refill my Jeanine pills, to perform a free of charge attempt of IVF procedure, to freeze
11 the embryo if the IVF procedure is successful, and to return back to work in the Hospital. I said
12 that I was not planning to carry a pregnancy myself because of previous multiple gynecological
13 surgeries and my age 50 yo. I didn't believe that with my pre-existing gynecological condition
14 and age I could carry the pregnancy myself. I informed Ms. Dunkelberger about my plan to work
15 in the Hospital, to earn money, and to hire a surrogate Mom in Russia because it is cheaper than
16 to hire the surrogate Mom in the United States.

17 During the conversation, I could observe that Ms. Dunkelberger was very dissatisfied by
18 my story and explanations. She asked me whether I was planning to return to Russia to make the
19 third embryo. I answered that I was not sure because I didn't know if I still had my own eggs at
20 that time.

21 Ms. Dunkelberger said to me that she couldn't pay me salary and benefits when I am in
22 Russia. I answered that I didn't require her to pay me salary and benefits when I am in Russia. I
23 requested a Leave Without Pay (LWOP). Ms. Dunkelberger said that in order for me to qualify
24 for this Leave, I needed to be employed by the Hospital during one year according to the Family
25 and Medical Leave Act (FMLA). I answered that I had no chance to wait for one year because I
26 had just a few pills of Jeanine left, I needed to refill the prescription in Russia because Jeanine
27 was not available in the United States, I needed to perform a free IVF attempt because I waited
28 for 9 months to be eligible, my turn just came in, I was 50 yo, my chances to have children were

1 very small, and I couldn't afford to pay 15 thousand U.S. dollars for one IVF attempt in the
2 United States.

3 Ms. Dunkelberger requested a written document from an OB/GYN that I really need an
4 IVF procedure. I said that at that time I didn't have health insurance in the United States but I
5 would be requesting my Russian OB/GYN to provide this letter. Ms. Dunkelberger said that I
6 needed to get a certified translator to translate this document, and I couldn't translate myself. I
7 said that I would request this document from Russia but I had no control of the processing time
8 of my request. I also said that, if I don't have time to translate this document in the United States,
9 I would translate it in Russia and send Ms. Dunkelberger a translated copy. Ms. Dunkelberger
10 said that she needed this document prior to my departure to Russia.

11 I contacted my Russian OB/GYN in Novosibirsk, the Russian Federation, and I requested
12 this document. It took seven days to process my request. I made multiple phone calls to Russia to
13 remind my Russian physician to email me this document.

14 On May 17, 2017, I worked a night shift together with my co-worker Mrs. Nadya Das
15 who is a Russian speaking lady and a Monitor Technician at 5D. I said to Nadya about my plan
16 to go to Russia to perform an IVF procedure. On that night, Ms. Dunkelberger was absent. I was
17 told that she would be absent for two weeks, and she would return back to work only at the end
18 of May 2017. I spoke to Assistant Manager Mrs. Phil Johnson on that night. I said to him that I
19 had spoken to Ms. Dunkelberger about my plan to go to Russia for an IVF procedure, and I told
20 Mr. Johnson exactly the same things that I had told Ms. Dunkelberger (that I was 50 yo, that I
21 didn't have children, that I performed approximately 8 IUI procedures with donor's sperm, that I
22 spent 2.5 years in Russia for my medical examination and treatment, that I underwent multiple
23 gynecological surgeries, that I performed 3 attempts of IVF, that I had an embryo that is frozen
24 in Russia, that I had a right for a free of charge IVF attempt in Russia, that I had only three pills
25 of Jeanine left, that I couldn't refill these pills in the United States, I needed to go to Russia to
26 perform a free IVF attempt, I couldn't pay \$15 thousand U.S. dollars for one IVF attempt in the
27 United States, I requested documentation from my Russian OB/GYN that I am in Registry of the
28 Ministry of Health of the Novosibirsk Region of Russia for a free IVF attempt, that I didn't have

1 time to get this document translated in the United States but I will translate it in Russia and email
2 it to Ms. Dunkelberger and Mr. Johnson. Also, I gave my verbal consent that I allow Mrs. Nadya
3 Das to preliminary translate this document before I have a chance to officially translate it in
4 Russia.

5 Because on that night Ms. Dunkelberger was absent, I asked Mr. Johnson's permission to
6 go to Russia for the mentioned above purposes. The exact words of Mr. Johnson were, "If you
7 need to go – go!" Therefore, he verbally allowed me to go to Russia. He gave me a form to fill
8 out and request a LWOP. I filled this form out, and I requested a LWOP from May 18, 2017 to
9 July 07, 2017. Unfortunately, I don't have a copy of that form. I put the completed form under
10 the door of Mr. Johnson's office.

11 Afterwards, I spoke to Ms. Das, and I told her that Mr. Johnson had verbally allowed me
12 to go to Russia for the IVF purpose. I also informed Ms. Das that I would be absent from May
13 18, 2017 to July 07, 2017.

14 During my shift, I received a document from my Russian OB/GYN in the email. I said
15 about it to Ms. Das. I informed her that I would email this document to Ms. Dunkelberger and
16 Mr. Johnson in the morning. I also said to Ms. Das that I give her my permission to translate this
17 document into English language for Ms. Dunkelberger and Mr. Johnson until I have a chance to
18 officially translate it in Russia.

19 In the morning of May 18, 2017, I emailed this document to Ms. Dunkelberger and Mr.
20 Johnson. In the evening of May 18, 2017, I departed from Albuquerque to New York and then to
21 Russia.

22 After I arrived at Novosibirsk, Russia, I immediately started to undergo a medical
23 examination for the upcoming IVF procedure. I visited my Russian OB/GYNs, I performed
24 blood tests, etc. I found a translating company, I got the document translated, and I emailed it to
25 Ms. Dunkelberger and Mr. Johnson on May 30, 2017. During my stay in Russia, I also sent a few
26 emails to Ms. Dunkelberger and Mr. Johnson explaining how the preparation for the IVF
27 procedure was going on. I never heard back from both Ms. Dunkelberger and Mr. Johnson.
28

1 In June 2017, my doctor found a cervical polyp, and I underwent a surgery
2 (polypectomy) in June 2017. Afterwards, I needed to wait for approximately 2 weeks to get the
3 pathology result. After I got the pathology result, my OB/GYN ordered blood tests for the
4 Follicle Stimulating Hormone (FSH) and the Anti-Mullerian Hormone (AMH), and I needed to
5 wait for another approximately 12 days in order to be eligible to get these tests done on the
6 second day of my menstrual period. It became obvious that I would not have time to perform an
7 IVF procedure and return back to the United States until July 07, 2017.

8 I requested another document from my Russian OB/GYN that I needed some extension
9 time for my IVF procedure. On July 01, 2017, I emailed Ms. Dunkelberger and Mr. Johnson
10 informing them that my OB/GYN ordered the blood tests for FSH and AMH, and I would not
11 have time to return back to the USA before July 07, 2017. I requested additional time off to stay
12 in Russia.

13 On July 03, 2017, I got an email from Ms. Dunkelberger. It was her first email since my
14 stay in Russia. This email informed me that my employment had been terminated on June 30,
15 2017. For me, it was a complete shock. Ms. Dunkelberger terminated my employment even
16 before July 07, 2017. On July 03, 2017, I send an email to Ms. Dunkelberger and Mr. Johnson
17 asking why my employment was terminated. I never heard back from them.

18 On July 14, 2017, I sent Ms. Dunkelberger and Mr. Johnson a translated version of the
19 second letter from my OB/GYN confirming the fact that I needed some extension time in Russia
20 to complete my IVF procedure. Again, both Ms. Dunkelberger and Mr. Johnson never
21 responded.

22 I timely connected with Mr. William Winter who was assigned to be my EEO counselor.
23 He informed me about the upcoming Mediation after I return back to the USA.

24 In July 2017, I sent a few more emails to Ms. Dunkelberger and Mr. Johnson informing
25 them about what was going on with my IVF procedure. Again, I never heard back from both of
26 them.

1 encrypted, and therefore she didn't email it to me. To me, it didn't make any sense. Ms.
2 Dunkelberger emailed me the Termination Letter which was not encrypted.

3 While being employed by the Hospital, I spoke to other female employees who were not
4 pregnant. One of them said that when she studied to become a Registered Nurse, Ms.
5 Dunkelberger allowed her to work as a Monitor Technician once a month at 5D. Another
6 employee, a new hire Registered Nurse, revealed that prior of getting hired she received five
7 phone calls from Ms. Dunkelberger who were asking her to fill out a job application to work as
8 an RN at 5D. Contrary, both Ms. Dunkelberger and Mr. Johnson never communicated with me
9 regarding my pregnancy issues, never answered my emails from Russia, never called me over the
10 phone, never requested my home postal address in Russia, and never answered my question why
11 my employment was terminated prior to July 07, 2017.

12 Ms. Dunkelberger refused to reinstate me back to work. On September 19, 2017, I filed a
13 formal Complaint of Employment Discrimination. The deadline for the Department of Veterans
14 Affairs (the Agency) to issue the decision was on March 18, 2018. I also contacted with the
15 Union (AFGE), and my representative was Ms. Karen Smith.

16 The Employment Development Department denied my Unemployment Insurance
17 benefits because Ms. Dunkelberger said to them that I had been fired for cause (that I went to
18 Russia without her permission). I have been receiving Food Stamps and General Assistance from
19 Monterey County.

20 Talking over the phone with Ms. Nadya Das, I learned that Ms. Dunkelberger had hired
21 two Monitor Technicians to substitute me. Both of them were males, and their ages were 30 and
22 35 years old. One of them was married and had children.

23 I realized that I was discriminated against my age 50 yo., my sex (female), and my desire
24 to get pregnant. I realized that Ms. Dunkelberger had refused to reinstate me back to work
25 because she hired two young males, and one of them was already married and had children.

26 On December 28, 2017, I requested a Right to Sue letter from the Agency because I had a
27 right not to wait for 180 days if I was discriminated against my age. I got an answer that the
28 Agency doesn't issue the Right to Sue letters.

1 On August 10, 2017, I sent an email to Mr. Winter, Ms. Dunkelberger, and Mr. Johnson
2 informing them that I would come back to the United States on August 17, 2017. Again, both
3 Ms. Dunkelberger and Mr. Johnson never responded.

4 I arrived in California on August 18, 2017, and I moved to Monterey, CA to stay with my
5 friends and be looking for a job. Also, I applied for the Unemployment Insurance benefits.

6 On September 07, 2017, I had Mediation via the Telecommunication services from the
7 VA facility in Marina, CA. I told my part of the story – that I went to Russia for an IVF
8 procedure, that I had gotten a verbal permission of Mr. Johnson to go to Russia, that I sent emails
9 to both Ms. Dunkelberger and Mr. Johnson from Russia informing them about the steps of my
10 examination and the IVF procedure, that I never heard back from both Ms. Dunkelberger and
11 Mr. Johnson, and that I was fired on June 30, 2017. I asked Ms. Dunkelberger to reinstate me
12 back to work.

13 Ms. Dunkelberger said that yes, she had received my request for a LWOP, and she
14 submitted this request to Dr. Tina Prince (a Director of Nursing Services). Dr. Prince denied my
15 request because I had not worked at the Hospital for one year according to FMLA. Ms.
16 Dunkelberger said that the Hospital mailed Dr. Prince's decision to my home postal address in
17 Albuquerque, NM, and I didn't respond. Ms. Dunkelberger said that because I went to Russia
18 without a permission, because I didn't respond to Dr. Prince's letter that was mailed to my home
19 postal address in Albuquerque, NM, and because I didn't return back to work, I was fired on
20 June 30, 2017.

21 To me, this explanation didn't make any sense. Ms. Dunkelberger knew very well that I
22 was not in Albuquerque, and I was in Russia. I asked her why she mailed this letter to my
23 address in Albuquerque instead of mailing it to Russia or emailing it to me if she knew that I was
24 in New Mexico. Ms. Dunkelberger answered that there was a policy to use the mailing address
25 that was on the file, and therefore the letter was mailed to my address in Albuquerque. I asked
26 why she didn't email this letter to my email address. She definitely knew my email address
27 because I sent so many emails to her. Ms. Dunkelberger answered that the letter was not
28

1 I sent two requests for the Alternative Dispute Resolution to the Agency, and I've never
2 heard back. Also, on March 05, 2018, I gave the Agency 60 days of extension to investigate my
3 complaint per their request. The new deadline to issue the Agency's decision was on May 18,
4 2018.

5 On April 11, 2018, I requested a copy of the Agency's final decision.

6 On May 18, 2018, I never heard from the Agency about the decision.

7 On May 21st, 2018, I notified the Agency about my intention to file a lawsuit.

8 On May 30, 2018, I got a phone call and an email from Ms. Jeanne Long who informed
9 me that my case had been received in OEDCA on 4/26/18, and they docketed a due date of
10 6/25/18 (60 days). Actually, I had never gotten any official notification that my case was
11 forwarded to OEDCA on April 26, 2018, and the decision would be issued in sixty days. Ms.
12 Long attempted to force me to forward my case to the OEDCA office in order to be procedurally
13 dismissed. I answered that the Agency was obligated to issue its decision by May 18, 2018 but
14 failed to do it. I still requested a decision.

15 By June 22nd, 2018, I never heard from the Agency and never received the Decision.

16 The Union Representative Ms. Smith stopped her communication with me after I
17 requested her to submit my Interrogatories to Ms. Dunkelberger and Mr. Smith. She is no longer
18 responding my emails and phone calls.

19 Because the Agency failed to issue the decision by May 18, 2018 and the Agency didn't
20 issue the decision during 30 days after I notified them about my intention to file a lawsuit, I am
21 filing this lawsuit.

22 **Legal Standard.**

23 **First cause of action – Pregnancy Discrimination.**

24 Read 42 U.S.C. §2000e(k), "The terms "because of sex" or "on the basis of sex" include,
25 but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical
26 conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be
27 treated the same for all employment-related purposes, including receipt of benefits under fringe
28

1 benefit programs, as other persons not so affected but similar in their ability or inability to work,
2 and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise.”

3 Read 29 CFR Appendix to Part 1604, Questions and Answers on the Pregnancy
4 Discrimination Act, Public Law 95-555, 92 Stat. 2076 (1978),

5 “5. Q. If, for pregnancy-related reasons, an employee is unable to perform the functions
6 of her job, does the employer have to provide her an alternative job? A. An employer is required
7 to treat an employee temporarily unable to perform the functions of her job because of her
8 pregnancy-related condition in the same manner as it treats other temporarily disabled
9 employees, whether by providing modified tasks, alternative assignments, disability leaves,
10 leaves without pay, etc...

11 6. Q. What procedures may an employer use to determine whether to place on leave as
12 unable to work a pregnant employee who claims she is able to work or deny leave to a pregnant
13 employee who claims that she is disabled from work? A. An employer may not single out
14 pregnancy-related conditions for special procedures for determining an employee's ability to
15 work. However, an employer may use any procedure used to determine the ability of all
16 employees to work. For example, if an employer requires its employees to submit a doctor's
17 statement concerning their inability to work before granting leave or paying sick benefits, the
18 employer may require employees affected by pregnancy-related conditions to submit such
19 statement. Similarly, if an employer allows its employees to obtain doctor's statements from their
20 personal physicians for absences due to other disabilities or return dates from other disabilities, it
21 must accept doctor's statements from personal physicians for absences and return dates
22 connected with pregnancy-related disabilities.

23 7. Q. Can an employer have a rule which prohibits an employee from returning to work
24 for a predetermined length of time after childbirth? A. No.

25 8. Q. If an employee has been absent from work as a result of a pregnancy-related
26 condition and recovers, may her employer require her to remain on leave until after her baby is
27 born? A. No. An employee must be permitted to work at all times during pregnancy when she is
28 able to perform her job.

1 9. Q. Must an employer hold open the job of an employee who is absent on leave because
 2 she is temporarily disabled by pregnancy-related conditions? A. Unless the employee on leave
 3 has informed the employer that she does not intend to return to work, her job must be held open
 4 for her return on the same basis as jobs are held open for employees on sick or disability leave
 5 for other reasons.”

6 Read the Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and
 7 Foster Care of the Office of the Personnel Management (OPM) of the VA system,

8 [https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-](https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-care.pdf)
 9 [sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-](https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-care.pdf)
 10 [care.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-care.pdf)

11 Page 9,

12 “A. *Sick Leave*

13 An employee is entitled to use sick leave for personal medical needs while pregnant or
 14 recovering from childbirth, to care for a family member who is pregnant or recovering from
 15 childbirth, to care for a family member with a serious health condition, or for general family care
 16 purposes such as well-baby doctor visits or illnesses. An agency may request administratively
 17 acceptable evidence indicating the duration of the employee's or family member's recovery from
 18 childbirth. Most health care providers certify that the recovery period following childbirth is
 19 about 6-8 weeks.

20 Tip: Sick leave is an entitlement that may be used without invoking leave under the
 21 Family Medical Leave Act (FMLA). See Section E. for information on FMLA.

22 *Sick Leave for Employee's Own Care*

23 An employee who is the birth mother is entitled to use any accumulated or accrued sick
 24 leave for prenatal care, any period of incapacity due to her pregnancy—including periods of
 25 morning sickness or medically prescribed bed rest—childbirth, and recovery from childbirth.
 26 There is no limit on the amount of sick leave that an employee may use for her own personal
 27 medical needs, however an employee has no entitlement to use sick leave except for authorized
 28 sick leave purposes.”

Page 14,

“E. Family and Medical Leave

Under the Family and Medical Leave Act (FMLA), Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for one or more of these purposes related to childbirth:

- the birth of a son or daughter of the employee and the care of such son or daughter...
- a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

Tip: An employee must have completed at least 12 months of service (not required to be consecutive and not required to be at the same agency) as a covered Federal employee (generally, an employee at an executive agency) in order to be entitled to FMLA leave. However, an agency may still provide a new employee not eligible for FMLA with a FMLA-like benefit.

FMLA for Employee's Own Care

An employee who must be absent from work because of a serious health condition is entitled to unpaid FMLA leave for prenatal care or any period of incapacity due to pregnancy, childbirth, or recovery from childbirth. This is because, according to the definition of serious health condition (see discussion of serious health condition under Section A. on Sick Leave), any period of incapacity due to pregnancy or childbirth, or for prenatal care, is considered a serious health condition, even if the employee does not receive active medical treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

Tip: Since sick leave and FMLA leave are two separate entitlements, an employee does not need to invoke FMLA to use sick leave for her period of recovery from childbirth. She can use 6-8 weeks of sick leave for recovery from childbirth, then later invoke FMLA to bond with her baby.”

Page 21,

“G. Leave Without Pay

1 An employee may request leave without pay (LWOP) to be absent from work for
 2 purposes related to pregnancy and childbirth. An employee may request LWOP without
 3 invoking FMLA, even if he or she has available paid leave. Supervisors should refer to agency
 4 internal policy and collective bargaining and/or union agreements prior to granting approval.
 5 However, agencies are encouraged to offer leave without pay for a longer period than what is
 6 provided for under the FMLA, to the maximum extent practicable for pregnancy and childbirth.

7 LWOP can be used in addition to the flexibilities that are already available, subject to
 8 agency policy and any applicable collective bargaining agreement.

9 Tip: For new employees who are not yet eligible for FMLA, an agency can provide the
 10 employee with a LWOP benefit that would mirror a FMLA benefit.”

11 Conclusion: I timely provided the Agency with documentation from my Russian
 12 OB/GYN that I needed to perform an IVF procedure. Despite I was a new employee and not
 13 eligible for a leave under FMLA, the Agency could provide me with a LWOP. The Agency was
 14 obligated to keep my working place until I return back to work under Question 9 of 29 CFR
 15 Appendix to Part 1604. In fact, the Agency discriminated and unlawfully terminated me because
 16 of my health condition that was related to pregnancy. The Agency refused to reinstate me back to
 17 work during the Mediation on September 07, 2017.

18 **Second case of action – Sex Discrimination.**

19 Read Title VII, Civil Rights Act of 1964, as amended (42 U.S. Code § 2000e–16 –
 20 Employment by Federal Government),

21 “(a) *Discriminatory practices prohibited; employees or applicants for employment*
 22 *subject to coverage.* All personnel actions affecting employees or applicants for employment ...
 23 shall be made free from any discrimination based on race, color, religion, sex, or national
 24 origin.”

25 “(c) *Civil action by employee or applicant for employment for redress of grievances; time*
 26 *for bringing of action; head of department, agency, or unit as defendant*

27 Within 90 days of receipt of notice of final action taken by a department, agency ... on a
 28 complaint of discrimination based on race, color, religion, sex or national origin, brought

pursuant to subsection (a) of this section, ... or after one hundred and eighty days from the filing of the initial charge with the department, agency, ... an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.”

“(e) *Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity.* Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.”

Sources: <https://www.dol.gov/oasam/regs/statutes/2000e-16.htm>

<https://www.law.cornell.edu/uscode/text/42/2000e-16>

Read the Executive Order 11478 -- Equal employment opportunity in the Federal Government,

“Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to

1 provide sufficient resources to administer such a program in a positive and effective manner;
 2 assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent
 3 the present skills of each employee; provide the maximum feasible opportunity to employees to
 4 enhance their skills so they may perform at their highest potential and advance in accordance
 5 with their abilities; provide training and advice to managers and supervisors to assure their
 6 understanding and implementation of the policy expressed in this Order; assure participation at
 7 the local level with other employers, schools, and public or private groups in cooperative efforts
 8 to improve community conditions which affect employability; and provide for a system within
 9 the department or agency for periodically evaluating the effectiveness with which the policy of
 10 this Order is being carried out."

11 Source: [https://www.archives.gov/federal-register/codification/executive-](https://www.archives.gov/federal-register/codification/executive-order/11478.html)
 12 [order/11478.html](https://www.archives.gov/federal-register/codification/executive-order/11478.html)

13 Read The Pregnancy Discrimination Act of 1978,

14 "That section 701 of the Civil Rights Act of 1964 is amended by adding at the end
 15 thereof the following new subsection:

16 "(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to,
 17 because of or on the basis of pregnancy, childbirth, or related medical conditions; and women
 18 affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all
 19 employment-related purposes, including receipt of benefits under fringe benefit programs, as
 20 other persons not so affected but similar in their ability or inability to work, and nothing in
 21 section 703(h) of this title shall be interpreted to permit otherwise..."

22 Source: <https://www.eeoc.gov/laws/statutes/pregnancy.cfm>

23 Read *Brown v. GSA*, 425 U.S. 820 (1976), "Section 717 of the Civil Rights Act of 1964,
 24 as added by § 11 of the Equal Employment Opportunity Act of 1972, proscribes federal
 25 employment discrimination and establishes an administrative and judicial enforcement system.
 26 The statute provides that personnel actions affecting federal employees or job applicants "shall
 27 be made free from any discrimination based on race, color, religion, sex, or national origin," §
 28 717(a); delegates enforcement authority to the Civil Service Commission (CSC), § 717(b); and

permits an aggrieved employee to file a civil action in a federal district court for review of his claim of employment discrimination.”

Source: <https://supreme.justia.com/cases/federal/us/425/820/>

Conclusion. The Agency fired me because I am a woman, and my intention was to get pregnant. The Agency hired two male Monitor Technicians to substitute me, and later refused to rehire me back to work. Therefore, the Agency clearly discriminated me against my sex.

Third cause of action – Age Discrimination.

Read The Age Discrimination in Employment Act (ADEA) – 29 U.S.C. §623,

“(a) *Employer practices.* It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s age...”

Read 29 U.S. Code § 633a - Nondiscrimination on account of age in Federal Government employment,

“(c) Civil actions; jurisdiction; relief

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.”

Read 29 U.S. Code § 626 - Recordkeeping, investigation, and enforcement

“(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter...

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.”

1 Read 29 CFR 1625.2 - Discrimination prohibited by the Act, "It is unlawful for an
2 employer to discriminate against an individual in any aspect of employment because that
3 individual is 40 years old or older."

4 Conclusion. The Agency fired me because I was 50 yo and hired two individuals who
5 were 30 and 35 years old. Because of that, the Agency clearly committed Age Discrimination. I
6 am entitled to a jury trial and recovery of damages as a result of violation.

7 **Fourth cause of action – Disability Discrimination, Failure to Provide me with**
8 **Reasonable Accommodations.**

9 Read the Executive Order 13548 of July 26, 2010 signed by President Barack Obama that
10 intended to make the Federal Government a model for hiring and retaining individuals with
11 disabilities,

12 "Sec. 3. *Increasing Agencies' Retention and Return to Work of Individuals with*
13 *Disabilities.* (a) The Director of the Office of Personnel Management, in consultation with the
14 Secretary of Labor and the Chair of the Equal Employment Opportunity Commission, shall
15 identify and assist agencies in implementing strategies for retaining Federal workers with
16 disabilities in Federal employment including, but not limited to, training, the use of centralized
17 funds to provide reasonable accommodations, increasing access to appropriate accessible
18 technologies, and ensuring the accessibility of physical and virtual workspaces.

19 Sec. 4. *Definitions.* (a) "Disability" shall be defined as set forth in the ADA
20 Amendments Act of 2008."

21 Source: <https://www.gpo.gov/fdsys/pkg/FR-2010-07-30/pdf/2010-18988.pdf>

22
23 Read The Americans with Disabilities Act of 1990 (ADA) – 42 U.S.C. §12102,
24 "(1) *Disability.* The term "disability" means, with respect to an individual—
25 (A) a physical or mental impairment that substantially limits one or more major life
26 activities of such individual;
27 (B) a record of such an impairment; or
28 (C) being regarded as having such an impairment (as described in paragraph (3)).

1 (2) *Major life activities*

2 (B) Major bodily functions. For purposes of paragraph (1), a major life activity also
3 includes the operation of a major bodily function, including ... reproductive functions.

4 (3) *Regarded as having such an impairment*. For purposes of paragraph (1)(C):

5 (A) An individual meets the requirement of “being regarded as having such an
6 impairment” if the individual establishes that he or she has been subjected to an action
7 prohibited under this chapter because of an actual or perceived physical or mental
8 impairment whether or not the impairment limits or is perceived to limit a major life
9 activity.”

10 (4) *Rules of construction regarding the definition of disability*

11 (C) An impairment that substantially limits one major life activity need not limit other
12 major life activities in order to be considered a disability.

13 (9) *Reasonable accommodation*. The term “reasonable accommodation” may include—

14 (B) job restructuring, part-time or modified work schedules, reassignment to a vacant
15 position, ... and other similar accommodations for individuals with disabilities.”

16
17 Read 42 U.S.C. §12112. Discrimination

18 “(a) *General rule*. No covered entity shall discriminate against a qualified individual on the basis
19 of disability in regard to job application procedures, the hiring, advancement, or discharge of
20 employees, employee compensation, job training, and other terms, conditions, and privileges of
21 employment.”

22
23 Read the Agency’s mandatory compliance with the Rehabilitation Act of 1973, as
24 amended, “The Rehabilitation Act of 1973, as amended (29 U.S.C. 701, et seq.), requires each
25 agency in the Executive Branch of the Federal government to establish programs that will
26 facilitate the hiring, placement, and advancement of individuals with disabilities. One method for
27 determining agency progress in fulfilling these requirements is through the production of reports
28 at certain intervals showing, for example, the number of employees with disabilities who are

1 hired, promoted, trained, or reassigned over a given time period; the percentage of employees
 2 with disabilities in the work force and in various grades and occupations; etc. Such reports bring
 3 to the attention of agency top management, OPM, and the Congress, the progress or any
 4 deficiencies within specific agencies or the Federal government as a whole in the hiring,
 5 placement, and advancement of individuals with disabilities.”

6 Source: Standard Form 256 – Self-Identification of Disability

7 https://www.opm.gov/forms/pdf_fill/sf256.pdf
 8

9 Read The Federal Agency Employment Strategies: A Framework For Disability
 10 Inclusion,

11 “G. Career Development and Advancement. Examples of existing, promising, and
 12 emerging personnel strategies and practices relating to career development and advancement
 13 include the following:

- 14 1) Adopting a promotion policy that includes disability among the positive selection
 15 factors or that provides priority consideration to qualified employees with disabilities
- 16 2) Determining whether management slots can be set-aside for individuals with
 17 disabilities and inform supervisors of the need to nominate employees with
 18 disabilities....
- 19 5) Providing career enhancement/leadership development opportunities, including
 20 reviewing employee development programs to ensure that no barriers exist for people
 21 with disabilities.”

22 “H. Retention Examples of existing, promising, and emerging personnel strategies and
 23 practices relating to retention include the following:

- 24 1) Adopting disability management and prevention programs (return-to-work programs)
- 25 6) Developing and implementing a plan to review proposed terminations to ensure
 26 disability accommodations were considered, where appropriate
- 27 8) Analyzing and monitoring terminations of permanent employees and reporting to the
 28 Secretary or other agency head and Administration on a quarterly basis.”

Source: <https://www.dol.gov/odep/pdf/FAEStrategies.pdf>

Conclusion. The Agency terminated my employment due to my disability to give birth to children by a natural way. The Agency failed to provide me with placement and advancement according to the Rehabilitation Act of 1973 as amended. The Agency refused to provide me with reasonable accommodations according to the Executive Order 13548 of July 26, 2010. The Agency failed to provide me with a return-to-work program according to The Federal Agency Employment Strategies: A Framework For Disability Inclusion.

Fifth cause of action – Libel.

I went to Russia for an IVF procedure with a verbal permission of Assistant Manager Mr. Johnson. However, the Agency said to the Employment Development Department that I had been fired because I left my working place without a permission. The Agency committed Libel. As a result, I haven't received the Unemployment Insurance Compensation.

Libel is not protected by the First Amendment to the U.S. Constitution and the Article 1, Section 2(a) of the California Constitution. Read *Gertz v. Robert Welch, Inc.* (No. 72-617) 418 U.S. 323 (1974), "Under the First Amendment, there is no such thing as a false idea.... There is no constitutional value in false statements of fact.... The erroneous statement of fact is not worthy of constitutional protection... But it remained true that, in a wide range of situations, the ordinary citizen could make out a *prima facie* case without proving more than a defamatory publication, and could recover general damages for injury to his reputation unless defeated by the defense of truth." Source: <https://www.law.cornell.edu/supremecourt/text/418/323>

Also, read *McDonald v. Smith*, 472 U.S. 479 (1985), "It does not follow that the Framers of the First Amendment believed that the Petition Clause provided absolute immunity from damages for libel." Source: <https://supreme.justia.com/cases/federal/us/472/479/case.html>

Conclusion.

The United States is liable for damages caused by libel.

Sixth cause of action – Intentional Infliction of Emotional Distress (IIED).

I need to establish four elements of IIED:

- 1 a) The defendant acts. The Agency retaliated and unlawfully terminated me against my age,
 2 my sex, my desire to get pregnant, and my disability to get pregnant by a natural way
- 3 b) The defendant's conduct is outrageous. It is outrageous to deprive me an opportunity to
 4 have children. It is outrageous not to reinstate me back to work and to lie to the EDD that
 5 I was fired for cause. It is outrageous to deprive me a source of income and therefore to
 6 deprive me an opportunity to go to Russia again and perform another IVF attempt again.
 7 It is outrageous to deprive me an opportunity to work and to serve the Community. My
 8 skills of an EKG/Monitor Technician are deteriorating
- 9 c) The defendant acts for the purpose of causing the victim emotional distress so severe that
 10 it could be expected to adversely affect mental health. The Agency's behavior could be
 11 expected to adversely affect my mental health. I am 50 yo, unemployed, without a family
 12 and children. Currently, I am working for the General Assistance program of Monterey
 13 County cleaning streets. I am working together with a felon who was released from a
 14 prison after 30 years of being sentenced for murder. Another my co-worker was in jail
 15 many times, one time for 8 years for battery. I clean streets removing trash, cigarette
 16 ends, etc. This is what my current working conditions are instead of working at the
 17 Hospital observing cardiac monitors
- 18 d) The defendant's conduct causes such distress. After I gave the Agency 60 days of
 19 extension to process my claim and gave the Agency a 30 day notification about my
 20 intention to file a lawsuit, the Agency is still not in hurry to issue its decision. The
 21 Agency attempted to force me to forward my complaint to OEDCA in order to dismiss it.
 22 Despite I requested arbitration two times, the Agency didn't provide me with the dates of
 23 the Arbitration. At this point, I feel that the Agency is going to dismiss my complaint and
 24 put me into another long waiting period of going through a litigation in a court.

25 Source: https://www.law.cornell.edu/wex/intentional_infliction_of_emotional_distress

26 **Seventh cause of action – Depriving me Liberty and Property without a due process.**

27 Read the 5th Amendment to the U.S. Constitution, “No person shall be held to answer for
 28 a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury,

1 except in cases arising in the land or naval forces, or in the militia, when in actual service in time
2 of war or public danger; nor shall any person be subject for the same offense to be twice put in
3 jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against
4 himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private
5 property be taken for public use, without just compensation."

6 Due Process Clause.

7 The guarantee of due process for all persons requires the government to respect all rights,
8 guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before
9 the government can deprive any person of life, liberty, or property. Due process essentially
10 guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding.
11 While the Fifth Amendment only applies to the federal government, the identical text in the
12 Fourteenth Amendment explicitly applies this due process requirement to the states as well.

13 Courts have come to recognize that two aspects of due process exist: procedural due
14 process and substantive due process. The procedural due process aims to ensure fundamental
15 fairness by guaranteeing a party the right to be heard, ensuring that the parties receive proper
16 notification throughout the litigation, and ensures that the adjudicating court has the appropriate
17 jurisdiction to render a judgment. Meanwhile, substantive due process has developed during
18 the 20th century as protecting those substantive rights so fundamental as to be "implicit in the
19 concept of ordered liberty."

20 Source: https://www.law.cornell.edu/wex/fifth_amendment

21 Conclusion. I had a full time employment status at the Hospital. By firing me, not
22 reinstating me back to work, the Agency deprived me liberty to work in my occupation and
23 property that I could purchase if I was employed and had money income. By not notifying me
24 about the Agency's decision to terminate my employment and sending a letter to my home postal
25 address in Albuquerque, NM instead of sending it to Russia, the Agency violated the procedural
26 due process clause of the 5th Amendment.

1 **Conclusion.**

2 Based on everything stated above, I experienced the following adverse events:

- 3 1) Being unemployed for almost one year, losing my EKG reading skills
4 2) Losing a source of income and the Unemployment Insurance benefits
5 3) Not being able to pay for another IVF attempt and for the surrogate mother
6 4) Not being able to create a family and to have children
7 5) Not being able to purchase property such as a car and a house
8 6) Not being able to pay my debts off
9 7) Not being able to study, to obtain a degree in the United States, and to obtain a better
10 paid job.

11
12 **My Pray for Relief.**

13 Read 28 U.S. Code § 2674 - Liability of United States, "The United States shall be liable,
14 respecting the provisions of this title relating to tort claims, in the same manner and to the same
15 extent as a private individual under like circumstances, but shall not be liable for interest prior to
16 judgment or for punitive damages."

17 I am respectfully asking the Court:

- 18 1) To reinstate me back to work at the Raymond G. Murphy VAMC or another VA
19 Hospital
20 2) To reimburse me with all lost salary and benefits at the amount determined after
21 calculations
22 3) To award compensatory damages:
23 - for a lost opportunity to have children
24 - for the lost opportunity to get a degree and a better paid job
25 - for the intentional infliction of emotional distress.

26 I evaluate the amount of compensatory damages as 5 (five) million US. Dollars. I will use
27 this sum of money perform IVF attempts. As an alternative, I will use this money to purchase
28 donor's eggs, donor's sperm, hiring surrogate mothers, and paying for taking care of the

1 children. I want to have at least three children. Also, I will use this money to pay for my
2 education in the United States

3 4) To award me Attorney's Fees at the amount determined at the end of the case.

4 5) To award punitive damages for libel that I was fired for cause in the amount 2 (two)
5 million U.S. dollars. I am requesting punitive damages for libel "in the hope of
6 deterring such reckless and damaging conduct and abuse of power in the future."

7 Source: a) Man wins defamation case against the United States (the Plaintiff was
8 awarded \$1.6 million US dollars of punitive damages in a defamation lawsuit against
9 the Federal Government)

10 http://www.wlf.org/litigating/case_detail.asp?id=501


11 b) *Vidrine v. United States*, No. 6:07-CV-1204, U.S. District Court for the Western
12 District of Louisiana (September 30, 2011)

13 http://www.wlf.org/litigating/case_detail.asp?id=501

14
15 I declare under the penalty of perjury under the Federal laws and the laws on the State of
16 California that the foregoing is true and correct. Executed at City of Monterey, CA, on June 24th,
17 2018.

18
19
20 Respectfully submitted,

21 Date: June 24th, 2018

22 Sign Name: 

23 Print Name: Tatyana E. Drevaleva
24
25
26
27
28

ATTACHMENTS.

Attachment 1 – my letter to Ms. Dunkelberger and Mr. Johnson with a medical record from my Russian OB/GYN that I am in registry for the IVF procedure (on Russian language). I sent this email on May 18, 2018 prior to my departure to Russia.

Attachment 2 – my May 30, 2017 letter to Ms. Dunkelberger and Mr. Johnson with a translated version of the document from my Russian OB/GYN that I sent on May 18, 2017.

Attachment 3 – Termination Letter that I received from Ms. Dunkelberger on July 03, 2017.

Attachment 4 – my July 14, 2017 letter to Ms. Dunkelberger and Mr. Johnson with a document from my Russian OB/GYN that I need extension to stay in Russia for the IVF procedure.

Attachment 5 – my letters to Ms. Dunkelberger and Mr. Johnson to which I never got any reply.

Attachment 6 – agreement to mediate signed.

Attachment 7 – Flow Chart explaining the EEO process.

Attachment 8 – Complaint for Employment Discrimination.

Attachment 9 – contact with the Union (AFGE).

Attachment 10 – my unsuccessful attempts to get an ADR process, and my request for the Agency's final decision.

Attachment 11 – Notice of Acceptance and template of Interrogatories.

Attachment 12 – my submitted Interrogatories.

Attachment 13 – my unsuccessful attempt to get a Right to Sue Letter.

Attachment 14 – the Agency's request for extension of time to investigate my complaint.

Attachment 15 – I granted the Agency with sixty days of extension.

Attachment 16 – official correspondence, summary of my complaint from the Agency.

Attachment 17 – referral of my complaint to the final agency's decision.

Attachment 18 – my case was forwarded to OEDCA.

Attachment 19 – my Notice of Intention to File a Lawsuit, the Agency's response, and my Reply.